

FILED

JUL 26 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PETER ROSELL-FERNANDEZ,

Defendant - Appellant.

No. 05-50557

D.C. No. CR-04-02785-W

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Thomas J. Whelan, District Judge, Presiding

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS and THOMAS, Circuit Judges.

Peter Rosell-Fernandez appeals from the 60-month sentence imposed following his guilty plea conviction for attempted entry after deportation, in violation of 8 U.S.C. § 1326, and making a false claim to United States

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

citizenship, in violation of 18 U.S.C. § 911. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Rosell-Fernandez contends that the district court erred in denying his motion for downward departure under U.S.S.G. § 5K2.13. We conclude that the district court did not err in determining that Rosell-Fernandez's history of mental illness did not "significantly contribute" to his commission of the offense. *See* U.S.S.G. § 5K2.13.

Rosell-Fernandez contends that this case should be remanded to the district court to make a finding on his motion for downward departure based on cultural assimilation. The record establishes that the district court considered all of Rosell-Fernandez's requests for departures and does not support his contention that the district court misunderstood its authority to grant them.

We review a sentence imposed after *United States v. Booker*, 533 U.S. 220 (2005), for reasonableness. Because we conclude that the sentence is reasonable, we affirm. *See United States v. Plouffe*, 445 F.3d 1126, 1131 (9th Cir. 2006).

AFFIRMED.